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March 1, 2010, Krista McClintock Smith transmitted Deloitte's fourth draft audit report, which [REDACTED]  
See Attachment 21.

On March 4, 2010, Krista McClintock Smith notified Coral that Deloitte was in the process of conferring with Warinner, Gesinger & Associates, LLC, ("WGA"), USAC's consulting firm for conducting quality assurance reviews of its externally sourced audits, with respect to Coral's management response to Deloitte's audit report. See Attachment 22.

[REDACTED]  
[REDACTED]. Later that same day, Krista McClintock Smith notified Coral of WGA's belief that (1) there is no clear answer about the proper interpretation of the term "working loop" as used in Section 54.307 of the FCC's rules, 47 C.F.R. § 54.307, and (2) the FCC ultimately would have to rule on the issue since USAC has no authority to interpret unclear FCC rules [REDACTED]  
[REDACTED] See Attachments 23 and 24. Specifically, Krista McClintock Smith notified Coral and its outside counsel that Deloitte would base its [REDACTED] on Deloitte's own interpretation of the FCC rules. See Attachment 25.

On March 5, 2010, Coral together with its outside counsel held a teleconference with Deloitte personnel Krista McClintock Smith, Joan Schweizer, and Jonathan Bass to discuss the basis for Deloitte's one finding. Jarret Rea of WGA also participated in the teleconference. Coral described its position as to why it believed Deloitte's audit finding was not based on an accurate application of the FCC's rules. Deloitte noted that it would consult further with the WGA experts and take Coral's position under advisement. On March 5, 2010, Krista McClintock Smith notified Coral that Deloitte and WGA had conferred further and indicated that Deloitte would move forward with [REDACTED] due to the inherent ambiguity of Section 54.307(b). Krista McClintock Smith also transmitted Deloitte's fifth draft audit report, which contained [REDACTED] citing limitations in the scope of Deloitte's examination [REDACTED]  
[REDACTED] See Attachments 26 and 27.

On March 8, 2010, Krista McClintock Smith transmitted Deloitte's sixth draft audit report (*i.e.*, the Initial Report), which contained [REDACTED] on the basis of Deloitte's inability to clearly determine whether Coral's policies are in conflict with the FCC's Rules. The earlier [REDACTED] citing scope limitations was removed. See Attachments 28 and 29. Additionally Krista McClintock Smith transmitted Deloitte's fifth and final draft management representation letter for Coral to complete and return. See Attachment 30.

On March 18, 2010, Coral transmitted a signed management representation letter and its management response to Deloitte. Both response documents from Coral were based on the Initial Report. See Attachments 31, 32 and 33.

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**Initial Audit Finding Transmitted March 8, 2010**

[REDACTED]

In accordance with Deloitte's decision, the "Effect" portion of the Initial Report provided as follows:

It is unclear whether the inclusion of lines during the [REDACTED] [REDACTED] is in accordance with the definition of a working loop in Section 54.307(b).

The "Cause" portion of the Initial Report provided as follows:

Apart from Section 54.307(b) of the FCC's Rules, no FCC rules, orders or decisions explicitly address the definition of CETC working loops for universal service support purposes.

The "Monetary Impact on Support" portion of the Initial Report provided as follows:

The monetary impact on support was not quantified, [REDACTED] [REDACTED] however, total disbursements made from the Universal Service Fund during the year ended June 30, 2008 amounted to \$14,971,972.

The "Recommendation" portion of the Initial Report provided as follows:

The Beneficiary should seek guidance from the FCC on whether their policy, including the interpretation of a working loop is in keeping with the FCC Rules.

**Reopening of the Initial Audit Finding**

On April 21, 2011, USAC notified Coral by letter (*i.e.*, the USAC Letter) that:

The USAC Internal Audit Division (IAD) reviewed the audit work papers and supporting documentation completed by [Deloitte], including the working loop audit finding noted by [Deloitte]. IAD determined that [Deloitte] has obtained adequate documentation to support the working loop finding.

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Accordingly, the IAD extended the opportunity for Coral "to review [Deloitte's] updated finding and Coral Wireless' original response." See Attachment 1: USAC Letter at 1. Coral requested, and was granted by Teleshia Delmar, an extension until May 20, 2011 to file its response.

**The Reopening of the Audit Is Inconsistent with the Applicable Rules**

The manner in which USAC and Deloitte have reopened the Initial Audit Finding is inconsistent with the FCC's rules and the requirements of GAGAS. Indeed, the USAC Letter and Updated Report seriously mischaracterize both the initial audit history and the Initial Report in a biased manner which suggests that the audit is no longer being conducted with integrity and objectivity as required by GAGAS. Specifically, the USAC Letter and the proposed Updated Report contain the following mischaracterizations and errors:

**Mischaracterization of the Scope of the Audit**

As explained in the initial draft report received by Coral on September 14, 2009 and in five subsequent revisions leading to, and including, the Initial Report transmitted by Deloitte to Coral on March 8, 2010, USAC engaged Deloitte:

to examine the compliance of [Coral], relative to Study Area Code No. 629002, with 47 C.F.R. Part 54, Subparts C and D of the Federal Communication Commission's ("FCC") Rules and related Orders governing Universal Service Support for the High Cost Program ("HCP") relative to disbursements of \$14,971,972 for telecommunication services made from the Universal Service Fund during the year ended June 30, 2008.

Independent Accountant's Report dated March 9, 2010. See Attachment 29. Notably, the scope of the audit included only Subparts C and D of Part 54 of the FCC's Rules. Consistent with this description, Deloitte and Coral never discussed compliance with any other subparts of the FCC's Rules during the audit process, and Deloitte never examined, or purported to examine, compliance with any other subparts of the FCC's rules.

In stark contrast to the description of the scope of the audit in the Initial Report, the USAC Letter now inaccurately claims that USAC:

previously engaged the services of the independent accounting firm of Deloitte . . . to perform an examination and provide an opinion concerning [Coral's] compliance with 47 C.F.R. Part 54, relevant sections of 47 C.F.R. Parts 32, 36, 64, and 69, and relevant Commission orders (collectively, the Rules) and to assist in fulfilling FCC requirements related to the Improper Payment Information Act (IPIA) relative to specific study area High Cost Program (HCP) support disbursements made by USAC during the period July 1, 2006 through June 30, 2007 (Audit Period).

USAC Letter at 1. USAC now claims that the audit encompasses all of Part 54 rather than merely Subparts C and D. USAC also now claims that the audit encompasses Parts 32, 36, 64 and 69 of the FCC's Rules, which is inexplicable because:

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- the FCC has not authorized USAC to conduct audits of wireless Eligible Telecommunications Carriers ("ETCs") for compliance with Parts 32, 36, 64 and 69; and
- Coral, as a wireless carrier, is not subject to Parts 32, 36 or 69, and Part 64 is irrelevant with respect to wireless ETC compliance with universal service requirements.
- Part 32, the FCC's Uniform System of Accounts, sets forth a standard chart of account methodology that applies only to dominant wireline incumbent local exchange carriers. *See* 47 C.F.R. § 32.11(a).
- Part 36 applies only to wireline incumbent local exchange carriers. *See, e.g., Jurisdictional Separations*, 16 FCC Rcd 11382, 11385, para. 3 (2001) (providing background on the Jurisdictional Separations rules).
- Part 64 is irrelevant with respect to wireless ETC compliance with Part 54 because there is no requirement for a wireless ETC to apportion its accounts between regulated and non-regulated operations.
- Part 69 applies only to wireline local exchange carriers for the development of interstate access charges. *See, e.g.,* 47 C.F.R. §§ 69.1 *et. seq.*

The date of the audit period was also changed from the year ending June 30, 2008 to the year ending June 30, 2007. The Updated Report does not provide any explanation for the expanded line count from the Initial Report.

The substantial changes to the description of the scope of the audit suggests that USAC and Deloitte may be trying to bolster the claim that the proposed interpretation of Section 54.307 of the FCC's rules is reasonable by seeking unlawfully to expand the audit's scope to cover additional Parts, including bring Part 36 upon which USAC and Deloitte must rely to support the proposed interpretation. Regardless of the intent, the scope and timeframe for the audit cannot lawfully be changed at this late date.

**Mischaracterization of the Initial Report**

The USAC Letter incorrectly claims that Deloitte's Initial Report resulted in the [REDACTED] USAC Letter at 1. This claim is incorrect in every aspect.

First, Deloitte concluded that [REDACTED] in accordance with the definition of a working loop in Section 54.307(b)." As such, far from concluding that support was improper, Deloitte concluded that they were unable to reach a decision with respect to whether the inclusion of a limited subset of lines was improper. *See* Effect portion of the Initial Report.

Second, Deloitte never suggested that 100% of HCP support for the Audit Period was improper. Rather, Deloitte had focused solely on the propriety of the reporting of [REDACTED]. Indeed, Deloitte ultimately did not even quantify the monetary impact on support since [REDACTED]. *See* Monetary Impact on Support portion of the Initial Report.

The USAC Letter also inexplicably claims that Deloitte's decision to [REDACTED] "was the result of Coral Wireless' lack [sic] understanding with [sic] the rules."

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USAC Letter at 1. The regulations and GAGAS require USAC and all independent auditors hired by USAC to be qualified to issue final audit reports based on their own research and opinions, and to base all audit reports on sufficient and appropriate evidence. GAO Yellow Book, Section 6.04(b). It simply is not possible for any misunderstanding by an audited entity to cause an error in a final audit report that is the result of an audit that has been prosecuted in accordance with federal law, including the GAGAS. Moreover, GAGAS require auditors to present in the audit report:

- Sufficient, appropriate evidence to support the findings and conclusions; and
- Descriptions of limitations or uncertainties within the reliability or validity of evidence.

GAO Yellow Book, Sections 8.14 and 8.15. Accordingly, [REDACTED] based solely upon Coral's understanding of the rules, GAGAS required Deloitte to so note in the Initial Report. To the contrary, Deloitte purported to [REDACTED] based solely upon its own research and conclusion that:

It is unclear whether the inclusion of lines [REDACTED] is in accordance with the definition of a working loop in Section 54.307(b). . . . Apart from Section 54.307(b) of the FCC's Rules, no FCC rules, orders or decisions explicitly address the definition of CETC working loops for universal service support purposes.

In short, there is no support for USAC's claim that Deloitte's decision [REDACTED] "was the result of Coral Wireless' lack [of] understanding [of] the rules," a decision that would have been unlawful if USAC's description were accurate.

**Inappropriate Withdrawal of the Initial Report and Proposed Updated Report**

In the USAC Letter, USAC explains that the USAC Internal Audit Division ("IAD") reviewed the audit work papers and supporting documentation provided by Deloitte. Based on its review, "IAD determined that [Deloitte] has obtained adequate documentation to support the working loop finding. . . . IAD would like to extend the opportunity for Coral Wireless to review the Firm's updated finding and Coral Wireless's original response." USAC Letter at 1.

Both the substance of the Updated Report as well as the process by which it was developed are fundamentally inconsistent with the applicable rules, including the GAGAS requirements. The Updated Report fails to identify any new documentation that was not identified and addressed in the Initial Report. The Updated Report similarly fails to address Coral's original response or any of the information Coral provided Deloitte. The Updated Report further fails to identify any legal or factual basis for the proposed interpretation of Section 54.307 of the FCC's rules, or any limitations or uncertainties about the reliability and validity of the evidence. Finally, the Updated Report fails to explain why Deloitte [REDACTED] based on exactly the same record that existed when Deloitte concluded that applicable law, including its ethical obligations under GAGAS, [REDACTED]

These failures are fundamentally inconsistent with GAGAS, and they suggest that USAC may have pressured Deloitte to withdraw its [REDACTED] and issue a finding of material non-compliance without regard to the applicable law and relevant facts. However, GAGAS

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require both USAC and the independent auditor to be transparent and disclose all relevant facts and legal support for all proposed findings, particularly in light of the prohibition on interpretation of the law by USAC. Since the proposed updated finding is fundamentally inconsistent with Coral's response, GAGAS require USAC and Deloitte to evaluate the validity of the audited entity's comments and:

- Explain in their report their reasons for disagreement with the audited entity; or
- Modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence.

GAO Yellow Book, Section 6.49. In light of the extensive communications between Deloitte and Coral regarding (a) Section 54.307, (b) the GAGAS requirements, and (c) the FCC rules that explicitly prohibit USAC and its independent auditors from interpreting unclear provisions of the rules or engaging in policy advocacy, the USAC Letter and Updated Report raise serious questions about the integrity and objectivity of USAC and Deloitte.

In short, the USAC Letter and the Updated Report reflect a bias which suggests that USAC and Deloitte are not conducting the audit with the integrity and objectivity required by law. Specifically, the numerous and serious flaws in the Updated Report suggest that USAC and Deloitte are not "conducting their work with an attitude that is *objective, fact-based, nonpartisan, and nonideological* with regard to [Coral]." GAO Yellow Book, Section 2.08 (emphasis added). The flaws also demonstrate that communications with Coral have not been "honest, candid, and constructive," GAO Yellow Book, Section 2.08, and suggest that USAC and Deloitte have failed to maintain "an *attitude of impartiality, having intellectual honesty*." GAO Yellow Book, Section 2.10 (emphasis added). It also suggests that USAC and Deloitte are failing to meet the requirement of GAGAS that they be "*independent in fact and appearance*." GAO Yellow Book, Section 2.10 (emphasis added).

### **The Updated Finding Is Based on an Unlawful Interpretation of an Unclear Rule**

The proposed updated finding is based on an interpretation of the term "working line" in Section 54.307 of the FCC's Rules, 47 C.F.R. § 54.307, which provides in relevant part as follows:

In order to receive support . . . , a competitive eligible telecommunications carrier must report to the Administrator the number of *working loops* it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. 47 C.F.R. § 54.307(b) (emphasis added).

\* \* \*

For universal service support purposes, *working loops* are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. *Id.* (emphasis added).

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Section 54.307 was written for wireline carriers rather than wireless carriers. Indeed, Section 54.307 explicitly defines the term “working loops” for universal service support purposes in terms of wireline facilities -- loops -- that wireless carriers do not have and thus do not use. All of the illustrative examples provided in the rule itself (*i.e.*, “C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service”) similarly refer to wireline facilities that wireless carriers do not have and thus do not use. Accordingly, the definition of working loops in Section 54.307 makes no sense in the wireless context, because none of the terms used in the definition itself refer to the facilities that wireless carriers could use to provide service. Consequently, Section 54.307 is inherently unclear with respect to wireless ETCs.

Faced with the inherent ambiguity created by the plain terms of Section 54.307 as applied to wireless carriers, the Updated Report seeks to create clarity by relying upon extrinsic evidence -- an unrelated and inapplicable definition from an appendix to Part 36 of the FCC’s rules -- to introduce a new term that is not used in Section 54.307 itself but that could make sense in the wireless context: “revenue generating.” However, the fact that USAC and Deloitte must resort to extrinsic evidence in order to support the reading of Section 54.307 upon which the proposed updated finding is based demonstrates conclusively that the Updated Report can be supported only by interpreting an unclear rule in violation of Section 54.702(c) of the FCC’s rules. 47 C.F.R. § 54.702(c) (“The Administrator may not make policy, *interpret unclear provisions of the statute or rules*, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”)(emphasis added). In other words, the proposed updated finding’s reliance on terms from an unrelated and inapplicable rule proves beyond question that the finding is based on an unlawful interpretation of an unclear rule.

Apart from Section 54.307 of the FCC’s Rules, no FCC rules, orders or decisions explicitly address the definition of CETC “working loops” for universal service support purposes. For this reason, the Personal Communications Industry Association (“PCIA”) filed a petition requesting clarification of the definition of “working loops” in Section 54.307 as applied to wireless CETCs. *See* Petition for Reconsideration and/or Clarification of the Personal Communications Industry Association, CC Docket No. 96-45 (filed Jan. 3, 2000). Specifically, PCIA asked the FCC to clarify Section 54.307 “with respect to wireless carriers and find that a ‘working loop’ for a wireless carriers is designated by a working phone number.” *Id.* at 5. Although the FCC later denied PCIA’s Petition on different grounds, the FCC made clear that it was considering the requested clarification of the term “working loops” in Section 54.307 as applied to wireless ETCs in the portability proceeding:

The issues raised by PCIA are within the scope of the separate proceeding to comprehensively reexamine the Commission’s rules governing portability of high-cost support, which is currently before the Joint Board. *We emphasize that our denial of PCIA’s petition here does not in any way prejudice what action we ultimately may take in the portability proceeding.*

*Federal-State Joint Board on Universal Service*, 18 FCC Rcd 22559, 22639 (2003) (emphasis added; citation omitted). The Commission has yet to take any action in the portability proceeding, and thus the term “working loop” in Section 54.307 of the FCC’s rules as applied to wireless ETCs continues to be inherently unclear. Therefore, USAC and Deloitte cannot,

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consistent with applicable law and thus GAGAS, base a finding of material non-compliance as proposed in the Updated Report upon its proposed interpretation -- or indeed any interpretation -- of the term "working loop" in Section 54.307 as applied to wireless ETCs like Coral.

**The Proposed Interpretation of Section 54.307 Is Fundamentally Inconsistent With Applicable Law**

The proposed interpretation seeks to use a definition from an irrelevant rule that does not apply to wireless carriers in order to interpret the applicable, but unquestionably unclear, rule upon which the proposed finding is based: Section 54.307, 47 C.F.R. § 54.307. Specifically, the proposed interpretation introduces the concept of "revenue producing" into the definition of "working loops" in Section 54.307(b), which does not refer to revenue, by referring to an unrelated appendix to Part 36 of the FCC's rules. *See* 47 C.F.R. § 36 *et. seq.*, Appendix – Glossary ("Working Loop - A revenue producing pair of wires, or its equivalent, between a customer's station and the central office from which the station is served.")

Part 36 of the FCC's rules, which governs the jurisdictional separations process for allocating costs between the state and federal jurisdictions in order to calculate wireline interstate access charges, is not relevant for universal service purposes. Moreover, Part 36 applies only to wireline ILECs, not competitive carriers like wireless CETCs. Because wireline ILECs have functioning loops to every house whether the house receives service or not, the reference to "revenue producing" lines in Part 36 is designed to ensure that only loops being used for a customer at the time are counted for the purposes of jurisdictional separations. By contrast, wireless CETCs do not have a "loop equivalent" in place until a number is assigned to a customer and configured in the network, so the Part 36 "revenue producing" distinction is irrelevant for wireless carriers. Moreover, although the jurisdictional separations process does not apply to wireless CETCs like Coral, the definition of Working Loops for the purposes of the separations process focuses upon whether the loop generates revenue rather than the specific timing of the payment of such revenue, which is consistent with Coral's interpretation of the definition of "Working Loop" for universal service purposes.

The revenue distinction is also irrelevant for both wireline and wireless carriers for universal service purposes, which is why Section 54.307 does not refer to revenues. Specifically, Section 54.307's definition of working loop does not focus upon whether a line is producing a specific type of revenue at a particular moment in time, which the FCC confirmed when it requested data for universal service purposes:

- Working loops include loops used for all services: message and special, *revenue and non-revenue*.
- Non-working loops include defective loops, loops reserved for some future activity, and loops with a pending connect status.

*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 12 FCC Rcd 9803, 9805, para. 7 (1997) (emphasis added). Although this definition is not binding, it reflects the FCC's interpretation of the term "working loops" for universal service purposes, which does not focus on whether the loop generates revenue at all. Coral notes that none of the lines at issue here were "non-working loops" because the lines were neither defective, reserved for future

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activity (Coral does not reserve telephone numbers for customers or offer seasonal use telephone numbers), nor designated as pending connect (which is inapplicable to wireless carriers).

The FCC recently confirmed its view that lack of payment or usage by a customer does not immediately disqualify a line for universal service support merely because the line is not "revenue producing" as claimed in the proposed interpretation of Section 54.307. *See Telecommunications Carriers Eligible for Universal Service Support (Virgin Mobile Designation as an Eligible Telecommunications Carrier)*, DA 10-2433, WC Docket No. 09-197 (rel. Dec. 29, 2010) ("*Virgin Mobile Designation*"). In the Virgin Mobile Designation, the FCC accepted Virgin Mobile's voluntary commitment to implement:

a non-usage policy in all states where it provides Lifeline service. Virgin Mobile's non-usage policy would require Virgin Mobile to identify customers that have not used its Lifeline service for 60 days and not seek support for such customers if they do not actively use the Lifeline service during a 30-day grace period. . . . Under this policy, if no usage appears on a Virgin Mobile Lifeline customer's account during any continuous 60-day period, Virgin Mobile will promptly notify the customer that the customer is no longer eligible for Virgin Mobile Lifeline service subject to a 30-day grace period. During the 30-day grace period, the customer's account will remain active, but Virgin Mobile will engage in outreach efforts to determine whether the customer desires to remain on Virgin Mobile's Lifeline service. If the customer's account does not show any customer-specific activity during the grace period (such as making or receiving a voice call, receiving or sending a text message, downloading data or adding money to the account), Virgin Mobile will deactivate Lifeline services for that customer. In addition, the Company will not seek to recover a federal Universal Service Fund subsidy for the free minutes provided to the customer during the grace period or thereafter report that customer on its USAC Form 497.

*Virgin Mobile Designation*, ¶24 and n.53. Accordingly, the lines are eligible for support for 60 days after a customer has stopped using them altogether and before the ETC has undertaken any investigation to determine whether the customer even wants the service anymore. The lines will also remain eligible for support as long as the customer uses the service by the 89<sup>th</sup> day, [REDACTED]. The FCC's position on Lifeline grace-periods confirms that the proposed interpretation of Section 54.307 is fundamentally inconsistent with the applicable law.

In brief, Coral's interpretation of the FCC's rules is reasonable, and its March 31, 2007 filing is accurate and compliant with such rules. By contrast, the proposed interpretation seeks to introduce terms from irrelevant and inapplicable rules in a way that is not even appropriate for those rules let alone the universal service rules at issue here.

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**The Proposed Interpretation Is Fundamentally Inconsistent With the Facts**

The industry does not, and cannot, apply the myopic interpretation of “revenue producing” upon which the proposed finding ultimately is based. Until a telephone number is actually disconnected pursuant to the service plan, it is impossible for any carrier – post-paid or pre-paid – to know on any given date whether any particular line is “revenue producing” under the myopic interpretation upon which the proposed finding is based.

All carriers providing service under a post-paid plan do not know during any given service period whether they will be subsequently paid for services provided, and nearly all carriers, *whether offering a post-paid plan or a pre-paid plan*, continue to provide service for a defined time period after a payment is missed. If the customer ultimately does not pay, then the line would be considered “non-revenue producing” for the final 30-90 day period preceding disconnection under the proposed interpretation. By contrast, if the customer pays at any time before disconnection, the line will have been a “revenue producing” line the entire time. For this reason, wireless carriers typically count every line that is assigned to a particular customer as a “working line” until the line is disconnected.

Although “revenue producing” is not relevant for the definition of “working loops” for universal service purposes, the description of Coral’s services and policies in the USAC Letter and Updated Report is simplistic and inaccurate. For example, the Updated Report states in relevant part as follows:

The Beneficiary provides wireless services on a month-to-month basis where the services are paid in advance. As the wireless service is prepaid, *the line ceases to be revenue producing at the end of the prepaid period*, and thus should not be included in the filings.

“Effect” portion of Updated Report (emphasis added). Accordingly, the proposed finding assumes that a line under Coral’s prepaid service plan does not generate – and is not capable of subsequently generating – any revenue during the time period after a missed payment.

In reality, the service initiation and disconnection dates of a line under Coral’s pre-paid plan are based on total revenue generated by fixed fees, variable fees and equipment sales, which is consistent with wide-spread industry practices. Like many providers of wireless services under post-paid or pre-paid plans, Coral does not immediately disconnect lines for late payment of service fees, which is important to all customers, including particularly the low-income customers that comprise a large portion of Coral’s customer base. A Coral line will not be disconnected if the customer pays at any point between the missed payment date and disconnection of the line. Accordingly, a line is revenue-producing for Coral from the time it is assigned to a particular customer until the point the line is disconnected pursuant to the plan.

**The Proposed Interpretation of Section 54.307 Could Only Be Applied by the FCC on a Prospective Basis**

The FCC itself could not apply the proposed interpretation of Section 54.307 of the FCC’s rules on a retroactive basis. The courts and the FCC have consistently held that when a rule is unclear, the FCC’s subsequent interpretation of that rule should be given prospective application only.

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The regulatory framework governing USAC and its auditing activities prohibits USAC and any independent auditors it hires from making policy or interpreting unclear rules, and explicitly requires USAC to seek guidance from the FCC when a rule is unclear. *See* 47 C.F.R. § 54.702. As such, the rules require that clarification of unclear rules be given by the FCC as part of the agency's general rulemaking activities for all parties rather than in specific compliance audits of particular beneficiaries.

The retroactive application of a new or changed policy is considered "extraordinary" and is disfavored by the law. *See Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 746 (D.C. Cir. 1986). Indeed, a long "line of Supreme Court decisions encourag[e] prospective rulemaking as the method for clarifying murky statutes or issuing needed regulations." *See Motion Picture Association of America, Inc. v. Oman*, 750 F. Supp. 3, 8 (D.D.C. 1990). The Supreme Court has explicitly stated that retroactive rulemaking is a disfavored legal concept which must meet stringent guidelines to be upheld:

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. (Citations omitted.) By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms. (Citations omitted.) . . . Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant.

*Bowen v. Georgetown*, 488 U.S. 204, 208-09, 109 S.Ct. 468, 471 (1988). When reviewing the actions of agencies that have clarified or modified their rules and policies, the Court of Appeals for the District of Columbia Circuit likewise has made clear that:

courts have long hesitated to permit retroactive rulemaking and have noted its troubling nature. When parties rely on an admittedly lawful regulations and plan their activities accordingly, retroactive modification or rescission of the regulation can cause great mischief.

*See Yakima Valley Cablevision*, 794 F.2d at 745-46. Accordingly, agencies may "not retroactively change the rules at will," and "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *NetworkIP v. FCC*, 548 F.3d 116, 122 (D.C. Cir. 2008)(citation omitted).

This justifiable reluctance to retroactively modify a party's obligations under Commission rules and policies has led the FCC to apply its decisions prospectively in cases where the rule or policy in question was unclear. For example, in the *Intercall Order*, 23 FCC Rcd 10731 (2008), the FCC addressed a question of interpretation where it had been unclear to the industry and public whether a particular class of telecommunications providers was subject to the USF contribution requirements, an ambiguity that was due in part to the Commission's own actions. Specifically, the FCC found that it had been unclear whether or not conference-calling service providers like Intercall were obligated to make USF contributions based on their "end user" revenues. Intercall argued, and the FCC agreed, that the "actions (or the lack thereof) in

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certain Commission proceedings may have contributed to the industry's unclear understanding of stand-alone audio bridging providers' direct contribution obligation." *Id.* at 10738, para. 23. Thus, due to the lack of clarity regarding the direct contribution obligations that was caused in part by the FCC's own actions, the FCC found that prospective application of its decision was warranted.

The facts against retroactive application of a rule interpretation in this case are even more compelling than they were in the *Intercall Order*. Specifically, as discussed above, the definition of "working loops" under section 54.307 is inherently unclear as applied to wireless carriers, so much so that the wireless industry, through PCIA, requested the FCC to confirm that the same interpretation Coral uses is correct. See PCIA Petition at 5 ("PCIA requests that the Commission clarify or, as necessary, reconsider this requirement with respect to wireless carriers and find that a 'working loop' for a wireless carrier is designated by a working phone number."). Although the FCC assured the wireless industry and the public in general that it was considering the requested clarification, the FCC has yet to do so, as noted above. Consequently, the Commission has contributed to the ambiguity inherent in Section 54.307 by failing to clarify the definition of a "working loop" as that term relates to wireless CETCs like Coral in the decade since PCIA first asked the Commission to clarify that very issue. As such, this situation is one "in which some new liability is sought to be imposed on individuals for past actions which were taken in good-faith reliance on [FCC] pronouncements," *NLRB v. Bell Aerospace*, 416 U.S. 267, 295, 94 S. Ct. 1757, 1772 (1974), which is exactly the type of situation in which retroactive "clarifications" are impermissible, particularly in light of the regulatory framework for USAC audits.

In sum, the Administrative Procedures Act and relevant precedent make clear that, under these circumstances, the FCC could apply the proposed interpretation only on a prospective basis. As such, even if USAC sought guidance from the FCC, the proposed interpretation of Section 54.307 could not be applied in the Coral audit. Therefore, neither USAC nor Deloitte can rely upon the proposed interpretation of Section 54.307 to issue a finding of material non-compliance by Coral.

### **Moving Forward With the Proposed Finding Would Be a Knowing and Willful Violation of the Law**

The rule upon which the proposed finding is based – Section 54.307 – unquestionably is unclear, and Coral has provided ample evidence that the proposed finding is fundamentally inconsistent with the applicable law and the relevant facts. The FCC's rules explicitly prohibit USAC and its independent auditors like Deloitte from interpreting policy or advocating substantive policy positions. See 47 C.F.R. § 54.702(c). The GAGAS prohibit USAC and its independent auditors like Deloitte from issuing a final finding that is inconsistent with the law and silent with respect to both Coral's position and the legal or factual support for the underlying rule interpretations.

Under these circumstances, a decision by USAC or Deloitte to move forward with the proposed finding would be a knowing and willful violation of the law that would cause foreseeable and substantial harm to Coral. As explained above, applicable law mandates that USAC and/or Deloitte either reinstate the initial [REDACTED] [REDACTED] To the extent USAC or Deloitte nonetheless decide to move forward with any finding of material non-compliance, Coral reserves the right to submit an

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additional response to the extent the Updated Report is amended in any way in response to the issues Coral raises in this response.

**Conclusion**

Section 54.307, the rule upon which the proposed finding is based, is unclear. Clarification of Section 54.307 is currently pending before the FCC, which can apply any clarification on a prospective basis only. Since the FCC could apply the proposed interpretation of Section 54.307 on a prospective basis only, it cannot form the basis of finding of material non-compliance by Coral. Therefore, the Coral audit should be concluded with a finding of no material non-compliance. Alternatively, [REDACTED] in the initial finding report should remain in place and effective.

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April 21, 2011

Mr. Barry Rinaldo  
Coral Wireless d/b/a Mobi PCS  
Chief Financial Officer  
733 Bishop St., Suite 1200  
Honolulu, HI 96813

Re: Coral Wireless d/b/a Mobi PCS Report HC-2008-126

Dear Mr. Rinaldo:

The Universal Service Administrative Company (USAC) at the direction of the Federal Communication Commission (FCC or Commission) Office of Inspector General (OIG), previously engaged the services of the independent accounting firm of Deloitte & Touche, LLP (Firm) to perform an examination and provide an opinion concerning Coral Wireless d/b/a Mobi PCS's (Coral Wireless) compliance with 47 C.F.R. Part 54, relevant sections of 47 C.F.R. Parts 32, 36, 64, and 69, and relevant Commission orders (collectively, the Rules) and to assist in fulfilling FCC requirements related to the Improper Payment Information Act (IPLA)<sup>1</sup> relative to specific study area High Cost Program (HCP) support disbursements made by USAC during the period July 1, 2006 through June 30, 2007 (Audit Period).

[REDACTED]

The USAC Internal Audit Division (IAD) reviewed the audit work papers and supporting documentation completed by the Firm, including the working loop audit finding noted by the Firm. IAD determined that the Firm has obtained adequate documentation to support the working loop finding.

IAD would like to extend the opportunity for Coral Wireless to review the Firm's updated finding and Coral Wireless' original response. Please see the enclosure. If Coral Wireless would like to provide additional documentation or update its response, please provide such information by May 6, 2011.

If there are any matters or issues that you would like to make us aware of, or if you have any questions or concerns, please feel free to contact Teleshia Delmar or myself at 202-776-0200.

<sup>1</sup> See 31 U.S.C. § 3122; Public Law 107-300, Stat. 2350, November 26, 2002.

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ATTACHMENT 1

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Thanking you in advance for your full cooperation.

Sincerely,

Wayne M. Scott  
Vice President  
Internal Audit Division

Aug. 10, 2012 Letter - Att. 7 (pt. 2)



### Scope of Work

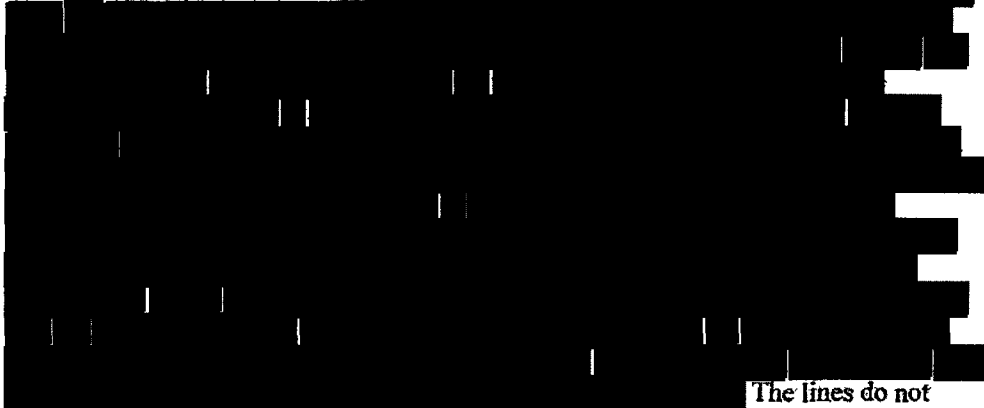
The audit procedures consisted of the following:

- Identify the number of lines reported as working loops during the 60-90 day period preceding the disconnect date which were included in the line count filings as of September 30, 2006 and December 31, 2006.
- Quantify the number of lines reported as working loops during the 60-90 day period preceding the disconnect date that were included in the September 30, 2006 and December 31, 2006 filings where the phone numbers were returned to inventory, and service was not reactivated.
- Report the results of findings.

### Audit Results

#### **Background**

In the attestation engagement report dated March 10, 2010, the Firm reported that the Coral Wireless (the Beneficiary)



The lines do not appear to meet the definition of a working loop as the service is prepaid, meaning that the line is not revenue producing, and was not active as of September 30, 2006.

The finding provided below is similar to the finding noted in the original audit (HC-2008-126) with additional details provided.

#### **Condition**

The Beneficiary provides wireless services on a month-to-month basis where the services are paid in advance. Revenues from wireless services are recognized as services are rendered. Amounts received in advance are recorded as deferred revenue and are recognized on a straight-line basis

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over the period of service.

[REDACTED]

[REDACTED]

**Criteria**

In the Glossary to 47 CFR Part 36, a working loop is defined as a revenue producing pair of wires, or its equivalent, between a customer's station and the central office from which the station is served.

Federal Communications Commission (FCC) Rule §54.307(a) provides that a competitive eligible telecommunications carrier ("CETC") may receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.

Under FCC Rule §54.307(b), in order to receive support, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. FCC Rule §54.307(b) defines working loops for CETC's as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.

**Effect**

The Beneficiary provides wireless services on a month-to-month basis where the services are paid in advance. As the wireless service is prepaid, the line ceases to be revenue producing at the end of the prepaid period, and thus should not be included in the filings.

**Cause**

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

submitted in accordance with Federal Communications Commission ("FCC") Rule §54.307.

**Monetary Impact  
on Support**

[REDACTED]

**Beneficiary Response**

Coral Wireless, LLC, d/b/a Mobi PCS ("Coral"), hereby responds to the Independent Accountants' ("Deloitte") Report on Compliance Relating to High Cost Support Received by Coral Wireless LLC d/b/a Mobi PCS (HC-2008-126) for the Year Ended June 30, 2008 (the "Report"). Coral provides pre-paid mobile services. Apart from Section 54.307(c) of the FCC's Rules, no FCC rules, orders or decisions explicitly address the definition of competitive eligible telecommunications carrier ("CETC") "working loops" for universal service support purposes. Indeed, on October 27, 2003, the FCC denied a petition filed by the Personal Communications Industry Association ("PCIA") requesting clarification of the definition of "working loops" as applied to wireless CETCs on the grounds that

[t]he issues raised by PCIA are within the scope of the separate proceeding to comprehensively reexamine the Commission's rules governing portability of high-cost support, which is currently before the Joint Board. *We emphasize that our denial of PCIA's petition here does not in any way prejudice what action we ultimately may take in the portability proceeding.*

*Federal-State Joint Board on Universal Service*, 18 FCC Rcd 22559, 22639 (2003) (emphasis added); *see also* Petition for Reconsideration and/or Clarification of the Personal Communications Industry Association, CC Docket No. 96-45 (filed Jan. 3, 2000) at 5 ("PCIA requests that the Commission clarify or, as necessary, reconsider this requirement with respect to wireless carriers and find that a "working loop" for a wireless carrier is designated by a working phone number."). The Commission has yet to take any action in the portability proceeding, and thus any clarification of Section 54.307(c) of the

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FCC's rules by the Commission would have to apply on a prospective basis only [REDACTED]

[REDACTED] Coral determines the date upon which a customer's line will be disconnected pursuant to its disconnection policy. As a provider of pre-paid mobile services, a customer can purchase more pre-paid services at any time until the customer's line is disconnected pursuant to the disconnection policy. As such, until the day of disconnection pursuant to the disconnection policy, it is impossible to know whether a customer's line will be disconnected or not. Therefore, Coral's interpretation of Section 54.307(c) of the FCC's rules is reasonable and consistent with FCC precedent.

If Coral Wireless does not respond to this letter with additional documentation or an updated response by May 6, 2011, IAD will submit the Firm's finding and Coral Wireless' original response (as noted above) to USAC management to determine what action, if any, is required. If USAC Management determines that corrective action is necessary, they will be in contact with you.

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**Deloitte.**

Deloitte & Touche LLP  
Suite 800  
1750 Tysons Boulevard  
McLean, VA 22102  
USA

Tel: +1 703 251 1600  
Fax: +1 703 272 9014  
[www.deloitte.com](http://www.deloitte.com)

December 30, 2008

Mr. Barry Rinaldo  
Coral Wireless Dba Mobi PCS  
733 Bishop Street, Suite 1200  
Honolulu, HI 96813  
808-723-2017

RE: Study Area Code (SAC) # 629002

Dear Mr. Rinaldo:

Deloitte & Touche LLP ("D&T") has been engaged to assist the Universal Service Administrative Company's ("USAC") Internal Audit Division in its examination of recipients of Universal Service Fund ("USF") High Cost Program ("HCP") funds. We plan to conduct a compliance attestation examination ("examination") related to disbursements from USF for the year ended June 30, 2008. It is anticipated that the examination will take approximately two weeks and will commence on February 2, 2009. The efficiency of the examination will depend on your availability, the availability of your staff, the condition of the documentation made available prior to and during the course of the examination, and the timeliness of your response to the attached data request.

**Nature of the Examination**

As more fully described in *Government Auditing Standards* and AICPA Compliance Attestation Standards (Section AT 601), a compliance attestation engagement requires that management:

- Perform an evaluation of its compliance with applicable requirements of Federal Communications Commission ("FCC") rules at 47 C.F.R. Part 54, Subparts C, D, and K and Part 36, Subpart F as well as applicable FCC Orders governing the HCP;
- Acknowledge (in the form of an assertion letter, an example of which is attached for your reference) responsibility for compliance with applicable requirements of the Rules and Orders; and
- Provide a management representation letter to D&T. The form and content of the management representation letter will be discussed with management during the course of the examination

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ATTACHMENT 2

Aug. 10, 2012 Letter - Att. 7 (pt. 2)

**D&T Contacts**

For your information and use, the examination program will be led by the following D&T personnel:

Name	Company	Position	Phone	Email
Joan Schweizer	D&T	Lead Audit Director	703-251-1210	jschweizer@deloitte.com
Peter Murtin	D&T	Lead Audit Senior Manager	703-251-1343	pxmurtin@deloitte.com

Other D&T personnel will perform the examination work. These individuals will be communicated to you prior to the commencement of the examination.

**Other Matters**

The examination will focus on the eligibility of your company for HCP support and the accuracy of information based on which your company seeks HCP support. We have attached a listing of the documents needed to facilitate our examination.

Requested documents (as shown in the attachment), are to be provided by email and should be sent to the following address **within fifteen business days of receipt of this letter**. Any documents that cannot be emailed can be mailed to the following address:

Deloitte & Touche LLP  
Attn: Peter Murtin  
Suite 800  
1750 Tysons Boulevard  
McLean, VA 22102-4219  
Email: [usmcleanusacaudit@deloitte.com](mailto:usmcleanusacaudit@deloitte.com)

Please recognize that D&T has the same authority as USAC's Internal Audit Division to request and view documents.

A D&T manager (or other designated team member) will contact you directly to discuss the attached data request so that any questions can be addressed before the examination commences. D&T will conduct a "kick-off" call to discuss the examination, project objectives, coordination, etc. with your key individuals responsible for the HCP.

At the completion of D&T's examination, D&T will conduct a final closing call to discuss the results of the examination and to discuss next steps in the examination process.

The results of D&T's work, as well as your comments received during the final call, will be presented in a draft report to USAC and the FCC Office of Inspector General ("FCC OIG"). Upon review and approval of the report by USAC Management and the FCC OIG, the report will be distributed to appropriate parties.

The following USAC website may answer some of your general questions regarding the High Cost Program:

<http://www.universalservice.org/hc>

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ATTACHMENT 2

Aug. 10, 2012 Letter - Att. 7 (pt. 2)

If there are any matters or issues that you would like to make us aware of, or if you have any questions or concerns, please feel free to call me at 703-251-1210.

Regards,

  
Joan Schweizer  
Audit Director

4 Attachments:

1. Documents to be provided to Deloitte & Touche LLP within fifteen (15) days of receipt of this letter
2. Assertion Letter
3. USAC Letter
4. FCC Letter

Aug. 10, 2012 Letter- Att. 7 (pt. 2)



**Federal Communications Commission  
Washington, D.C. 20554**

November 5, 2008

Dear High Cost Program Beneficiary:

Under the oversight of the Federal Communications Commission ("FCC") Office of Inspector General ("OIG"), the Universal Service Administrative Company ("USAC") is auditing carriers that receive federal Universal Service Funds ("USF") from the FCC's High Cost Support Program. Under this audit process your company was randomly selected for audit, and USAC retained a CPA audit firm to audit your company. As a consequence, the FCC's Inspector General ("IG") expects that the assigned Certified Public Accountant ("CPA") auditing firm will be given immediate and complete access to the books, records, and any other supporting documentation that was requested of your company in the audit announcement letter from USAC and any additional information that the auditor shall require.

As the FCC appointed administrator of the Universal Service support mechanisms,<sup>1</sup> USAC is legally authorized to audit carriers reporting USF data.<sup>2</sup> The FCC, the FCC's IG, and USAC may request and obtain all records, documents and other information that is necessary to determine whether your firm has been in compliance with FCC and state requirements for the High Cost Support Program.<sup>3</sup> Under the Commission's rules, carriers are required to maintain records and documents that demonstrate compliance with the FCC's rules and orders that are applicable to the High Cost fund. Upon request from the FCC, OIG, or USAC, carriers shall provide such records to the FCC, OIG, or to USAC's auditors.

We look forward to your full and complete cooperation with the assigned CPA audit firm in its efforts to complete the audit of your firm. Failure to comply with the FCC's rules will subject your company to the enforcement provisions (e.g., fines and forfeitures) of the Communications Act of 1934, as amended, as well as other applicable laws and regulations.

<sup>1</sup> 47 C.F.R. § 54.701 (a).

<sup>2</sup> 47 C.F.R. § 54.707. See also Inspector Generals' Act of 1978, 5 USC, App. at § 6.

<sup>3</sup> 47 C.F.R. § 32.12; 5 U.S.C., App. 3, § 6 (a) (1); 47 U.S.C. § 220 (c).

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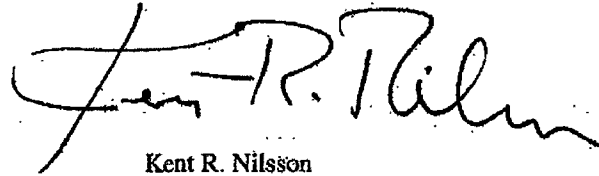
002/002

ATTACHMENT 2

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If you have any questions, please contact William Garay, Assistant Inspector General for Universal Service Fund Oversight, at (202) 418-7899 / [William.Garay@fcc.gov](mailto:William.Garay@fcc.gov) or Paul Hartman, Management and Program Financial Advisor, at (202) 418-0992 / [Paul.Hartman@fcc.gov](mailto:Paul.Hartman@fcc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kent R. Nilsson". The signature is fluid and cursive, with a large initial "K" and "N".

Kent R. Nilsson  
Inspector General

cc: Mr. Jeffrey A. Mitchell, Esq., USAC